

EXHIBIT A

SUPREME COURT STATE OF NEW YORK

COUNTY OF NEW YORK : CRIMINAL TERM : PART 52

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PEOPLE OF THE STATE OF NEW YORK, Ind. No. 2280/08

- against -

DAVID HOLZER

Defendant.

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111 Centre Street
New York, New York
April 30, 2009

HONORABLE THOMAS FARBER, Judge

A P P E A R A N C E S :

NEW YORK COUNTY DISTRICT ATTORNEY
District Attorney, New York County
BY: HOPE KORENSTEIN, ESQ.

ACID FORFEITURE UNIT
BY: MADELINE GUILMAIN, ESQ.

RON RUBENSTEIN, ESQ.
Attorney for defendant

CLAUDINE Y. DAVIDSON
Senior Court Reporter

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PROCEEDINGS

1 THE CLERK: Calling calendar number
2 11, David Holzer.

3 MS. KORENSTEIN: Hope Korenstein for
4 the People.

5 MS. GUILMAIN: Madeline Guilmain,
6 G-U-I-L-M-A-I-N, from the Asset Forfeiture Unit.

7 MR. RUBENSTEIN: For the defendant,
8 Ron Rubenstein.

9 THE COURT: Okay. So my understanding
10 is there is going to be a disposition.

11 MS. GUILMAIN: Yes, your Honor.

12 THE COURT: Okay.

13 There is a written plea agreement
14 which has been extensively negotiated by both
15 sides; is that right?

16 MR. RUBENSTEIN: That's correct, your
17 Honor.

18 THE COURT: Have you reviewed this now
19 with your client and are we prepared to move
20 forward?

21 MR. RUBENSTEIN: Yes, I have. I not
22 only reviewed it today, I visited the defendant
23 this week and went over the draft where there
24 are very few changes between that and what's
25 contained here and we are ready to enter a plea

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PROCEEDINGS

1 at this time your Honor.

2 THE COURT: So, why don't we have the
3 plea agreement executed and give me a copy so I
4 know what we are working from.

5 MS. KORENSTEIN: Absolutely, your
6 Honor.

7 THE COURT: Are there any changes from
8 what you showed me earlier today?

9 MS. KORENSTEIN: No, your Honor.

10 MR. RUBENSTEIN: Mr. Holzer will sign
11 in open court your Honor the plea agreement.

12 MS. KORENSTEIN: Actually, there are
13 three originals if that's okay. I have one.
14 The Court has one and you have one.

15 MR. RUBENSTEIN: Also, does your Honor
16 have the stipulation in anticipation--

17 VOICE: Your Honor, may I approach on
18 this case?

19 MS. KORENSTEIN: He is not a party.

20 VOICE: I represent the victim.

21 THE COURT: No, sir.

22 COURT OFFICER: Have a seat, please.

23 MS. GUILMAIN: Judge, I think what
24 Mr. Rubenstein was starting to say is we are
25 also executing a forfeiture agreement that the

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1 defendant is going to sign today.

2 MR. RUBENSTEIN: Yes. We are going to
3 execute two documents. One is a stipulation in
4 anticipation of a discontinuance. It's already
5 been signed by Ms. Leslie Shoaler who is
6 physically present in court and I am giving the
7 document to Mr. Holzer to sign.

8 We are also executing a document
9 called Stipulation of Discontinuance and Order.
10 This document is being executed prematurely your
11 Honor in view of the fact that until all the
12 property is disposed of and the money is
13 distributed by the People, it can't be filed
14 with the Court but it would require signatures
15 at that time.

16 So in anticipation of that, we are
17 executing it at this time in open court.

18 MS. GUILAIN: We will hold on to those
19 papers until the proposed time.

20 THE COURT: After you finish executing
21 the papers, approach before we do the plea,
22 please.

23 MR. RUBENSTEIN: Also executing your
24 Honor and signing of note is an assignment from
25 Mr. David Holzer to Michael Zackman in relation

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PROCEEDINGS

1 to moneys that were executed from Edgufund.

2 MS. GUILAIN: It's part of the Asset
3 Forfeiture agreement. There is funds being held
4 by a company that belonged to one of the
5 victims. We are simply transferring that back
6 with the document, transferring back to the
7 victim that it actually came from.

8 MS. KORENSTEIN: For the record, there
9 is also a restitution order in this case that
10 the parties agree will be signed at the time of
11 sentence.

12 THE COURT: All right. Can you all
13 approach, please.

14 (Whereupon, discussion held at the
15 bench, and then the proceedings continued as
16 follows:)

17 THE COURT: Let me know when you are
18 ready to go forward.

19 MR. RUBENSTEIN: We are ready your
20 Honor.

21 MS. KORENSTEIN: Your Honor, may I
22 approach with a copy of the indictment?

23 THE COURT: Yes, please.

24 (Document handed to the Court at this
25 time.)

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1 THE COURT: So, Mr. Holzer, your
2 lawyer tells me that you wish to withdraw your
3 plea of not guilty and plead guilty to counts
4 one, three, four and five of the indictment to
5 satisfy these charges. Is that correct?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, the terms of the plea
8 as we mentioned are set forth in this plea
9 agreement and nothing that I say is meant to
10 contradict it or supersede it. You understand
11 that, right?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you fully read the
14 agreement, every single line and page and word
15 of it?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand
18 everything that's in it?

19 THE DEFENDANT: I understand
20 everything.

21 THE COURT: Have you discussed it
22 fully with your attorney, Mr. Rubenstein?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that
25 when you plead guilty, you give up your right to

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1 a trial?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Has anybody promised you
4 anything in exchange for your plea of guilty
5 other than what's set forth in this agreement
6 and my promise as to sentence which is also
7 contained in this agreement?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Actually, I have not made
10 a promise as to sentence but as you know, what's
11 set forth that there will be a joint
12 recommendation by the People and your attorney
13 as to sentence assuming you fulfill certain
14 conditions or if you don't fulfill other
15 conditions and I have agreed that I will follow
16 that recommendation if I have no other reason
17 not to.

18 And of course, if I can't follow the
19 recommendation for some reason, I will permit
20 you to withdraw your plea and start over again.

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: At a trial, you have
23 certain rights that you don't have when you
24 plead guilty. And when you plead guilty, you
25 give up those rights. You understand that?

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1 THE DEFENDANT: Yes, I do.

2 THE COURT: One right you have at a
3 trial is to have the decision as to whether you
4 are guilty or not guilty determined by a jury of
5 12 people and their verdict would have to be
6 unanimous. Do you understand you have that
7 right?

8 THE DEFENDANT: Yes, I do, your Honor.

9 THE COURT: At a criminal trial,
10 everything happens in open court. So, when the
11 people call witnesses to testify, you get to see
12 them testify. Your lawyer gets to ask them
13 questions. That's called confrontation of
14 witnesses or cross examination.

15 Do you understand that?

16 THE DEFENDANT: Yes. I am aware of
17 that.

18 THE COURT: At a criminal trial, you
19 have the right to put on a case if you wish to
20 and call witnesses if you wish to and testify if
21 you wish to but you don't have to do any of that
22 at a criminal trial. You have the right to do
23 nothing because the People have the entire
24 burden of proving you guilty beyond a reasonable
25 doubt and one of the rights you have at a

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1 criminal trial is to remain completely silent.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: When you plead guilty, you
5 admit your guilt and there is no trial so you
6 give up all the rights I just told you and every
7 other right you have when you go to trial.

8 You understand that?

9 THE DEFENDANT: Yes, I do your Honor.

10 THE COURT: Conviction by plea of
11 guilty is the same as a conviction by verdict
12 after trial and this plea will result in your
13 having on your record a conviction for three
14 counts of grand larceny in the first degree, a
15 class B felony and one count of grand larceny in
16 the second degree, a class C felony.

17 You understand that?

18 THE DEFENDANT: Yes, I do, your Honor.

19 THE COURT: As I mentioned to you,
20 ordinarily when you plead guilty as a
21 consequence of that plea, you give up all the
22 rights you have when you go to trial. And you
23 understand that, correct?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: Ordinarily, you do not

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1 automatically give up your appellate rights when
2 you plead guilty. However, as a condition of
3 the agreement that you are entering into now,
4 you are also giving up any right you have to
5 appeal your conviction to a higher court.

6 Do you understand?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: Have you fully discussed
9 that with your attorney as well?

10 THE DEFENDANT: I did.

11 THE COURT: I understand that there is
12 an agreed upon allocution which is paragraph
13 four of this plea agreement.

14 MS. KORENSTEIN: Yes, your Honor.

15 THE COURT: Do you want me to swear
16 the defendant in and have him allocute and read
17 the allocution?

18 MS. KORENSTEIN: Yes, please.

19 THE COURT: All right. Raise your
20 right hand. Do you solemnly swear what you are
21 about to tell me is the truth, the whole truth
22 and nothing but the truth so help you God?

23 THE DEFENDANT: I do.

24 THE COURT: I will ask the defendant
25 to read the allocution then.

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1 THE DEFENDANT: Between March 2002 and
2 April 2008, I stole more than \$16 million from
3 Barry Fingerhut, Heidi and John Rapillo, Michael
4 and Barbara Zackman and Barry Pessar. Beginning
5 in 2002, I invited Barry Fingerhut, someone I
6 known for 15 years to invest in Dellwood
7 Partners, an entity that I represented that
8 Barry Fingerhut was making real estate
9 investments between March 2002 and
10 September 2006.

11 Barry Fingerhut gave me more than
12 12 million dollars to invest in Dellwood
13 Partners. In fact, Dellwood Partners did not
14 exist and I used that money for my own personal
15 use.

16 Between December 2005 and March 2006,
17 I took \$1.6 million dollars from Heidi and
18 John Rapillo, people I have known for more than
19 20 years. I represented to them I would invest
20 their money in a movie theater and penthouse
21 project. In fact, I did not invest any money on
22 their behalf. I used Rapillo's money for my own
23 personal use and invested some of it on my
24 behalf.

25 Between November 2006 and

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1 November 2007, I took more than \$1.7 million
2 from Barbara and Michael Zackman, people whom I
3 had been friends for more than 20 years. I
4 represented to them that I would invest their
5 money in a company called Vertex and a company
6 called Consonus, C-O-N-S-O-N-U-S.

7 In February 2007, I told them that I
8 would invest their money in a real estate deal
9 in Florida through a company called trident. In
10 fact, I did not invest any money on their
11 behalf. I used Zachman's money for my own
12 personal use and invested some of it on my own
13 behalf.

14 In March 2008 I invited Barry Pessar,
15 someone I known for about ten years to invest in
16 a company called Versadial.

17 Based on representations that I made
18 Barry Pessar gave me \$150,000 for the investment
19 in Versadial. I did not in fact invest Barry
20 Pessar's money with Versadial but used it for my
21 own personal use.

22 In this manner, I stole more than \$16
23 million from the above named parties without
24 their permission and authority.

25 I would also like to just add that how

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1 sorry I am for the pain and duress that I have
2 caused them.

3 THE COURT: That's not part of the
4 initial allocution but I guess apologies are
5 always welcome.

6 We can take the plea and adjourn the
7 matter for sentence.

8 THE CLERK: In the presence of your
9 attorney Mr. Rubenstein, do you now withdraw
10 your previously entered plea of not guilty and
11 do you plead guilty to three counts of grand
12 larceny in the first degree and one count of
13 grand larceny in the second degree in full
14 satisfaction of indictment 2280/08? Are those
15 your pleas?

16 THE DEFENDANT: Yes.

17 THE COURT: Date for sentence.

18 I understand the victim's wish to
19 speak at sentence.

20 MS. KORENSTEIN: That's correct.. Just
21 for the record, I would like to make a note
22 first of all that Mr. Holzer is waiving his
23 right to appeal and second of all, that per the
24 plea agreement--

25 THE COURT: I allocuted already.

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1 MS. KORENSTEIN: This pertains to the
2 date of sentence. The defendant is required to
3 dispose of certain assets per the agreement
4 before we can sentence him.

5 THE COURT: Are you asking for a long
6 sentence date? I am happy to give you a long
7 sentence date.

8 MS. KORENSTEIN: Yes, because it's
9 pending the sale of a home.

10 MR. RUBENSTEIN: I think the plea
11 agreement talks of March.

12 MS. KORENSTEIN: A year.
13 We spoke about a year.

14 MR. RUBENSTEIN: If your Honor wants
15 to put it down for a control date in case
16 everything is resolved--

17 THE COURT: I am reluctant to adjourn
18 any case for a year but I am certainly happy to
19 put it off until the fall for sentence with the
20 understanding that if what needs to be
21 accomplished is not accomplished by then, we
22 will adjourn for a period of up to a year.

23 MS. KORENSTEIN: That's fine, your
24 Honor.

25 THE COURT: So, find me a Tuesday in
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1 mid-September. How about the 15th or the 22nd?

2 MR. RUBENSTEIN: The 22nd is good.

3 THE COURT: September 22nd, for
4 sentence, or to adjourn it so that the defendant
5 can further comply with the terms of the
6 agreement.

7 MS. KORENSTEIN: Judge, I am sorry.
8 One more thing. There will also --

9 THE COURT: You don't need the
10 indictment?

11 MS. KORENSTEIN: Also judge just for
12 the record, there will be a restitution order
13 executed on the date of sentence as well.
14 Counsel has seen a copy of that, and he is
15 aware.

16 (Continued on the next page.)
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PROCEEDINGS

1 MR. RUBENSTEIN: That is correct your
2 Honor. I have received a copy of it and I am
3 aware of what the contents of it is.

4 THE COURT: The defendant is remanded
5 and the case is adjourned to September 22nd for
6 sentence.

7 MS. KORENSTEIN: Thank you very much.

8 * * *

9 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

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